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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/826,680
Filing Date: April 05, 2001
Appellant(s): COUTTS ET AL.

MAILED

AUG 20 2007

GROUP 3600

Gregory A. Welte
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 04/23/2007 appealing from the Office action mailed 07/13/2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct. The objection to claim 27 has been withdrawn as "presently amended" is an acceptable alternative to "currently amended".

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2005/0216888	DRUMMOND ET AL	09-2005
6,487,538	GUPTA ET AL	11-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 16-24, 26-28 and 30-32 are rejected under 35 U.S.C. 102(e) as being anticipated by Drummond (US 2005/0216888).

As per claims 16, 19, 20, 22, 26, 28 and 30, Drummond teaches:

An automated teller machine (ATM) for dispensing cash in the form of paper money to an ATM customer conducting a cash dispense transaction at the ATM and for displaying advertisements for the ATM customer to view while the ATM customer is conducting the cash dispense transaction at the ATM, the ATM comprising:

a cash dispenser for dispensing cash to an ATM customer when the customer is conducting a cash dispense transaction at the ATM (see paragraph 116);

an ATM display (see paragraph 88);

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means for accessing an advertisement database to retrieve an authorized advertisement associated with the ATM (see paragraph 88); and

means for incorporating the retrieved advertisement in a screen for displaying on the ATM display to allow the ATM customer to view the screen while the ATM customer is conducting the cash dispense transaction at the ATM (see paragraphs 115-116; 118-122).

As per claim 17, Drummond teaches:

An ATM according to claim 16, wherein the means for incorporating the retrieved advertisement in a screen includes an ATM program for executing a Web browser (see paragraph 74).

As per claim 18, Drummond teaches:

An ATM according to claim 17, wherein the ATM program is operable to allocate screen space to the Web browser in accordance with predefined allocation times (see paragraph 114).

As per claim 21, Drummond teaches:

A method according to claim 20, further comprising the steps of:

logging the number of times the advertisement database has been accessed by each ATM and applying a charge to each advertisement based on the number of accesses (see paragraph 116).

As per claim 23, Drummond teaches:

The system of claim 22, wherein the configuration of the system is such that an authorized user is allowed to update the stored advertisements (see paragraph 121).

As per claim 24, Drummond teaches:

A system according to claim 22, wherein the server is configured to allow a user to enter descriptive fields relating to an advertisement (see paragraph 121).

As per claim 27, Drummond teaches:

A method of offsetting the cost of owning an automated teller machine (ATM) which can dispense cash in the form of paper money to an ATM customer conducting a cash dispense transaction at the ATM , the method comprising the steps of:

providing a database for storing advertisements (see paragraph 116);

allowing an authorized ATM customer to access the database and to transmit an advertisement from an ATM to the database for storing therein and screening the transmitted advertisement to ensure that it meets an acceptance criterion (see paragraphs 103, 121, 122) and storing the screened advertisement in a database entry associated with the ATM and charging a fee to the ATM customer each time the advertisement is accessed by the ATM (see paragraph 116).

As per claims 31 and 32, Drummond teaches:

ATM according to claim 16, wherein the retrieved advertisement is displayed while cash is being counted or staged by the ATM (see paragraphs 116, 122).

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 25 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Drummond (US 2005/0216888) in view of Gupta (US 6,487,538).

As per claim 25, Drummond teaches:

A system according to claim 22, further comprising a screening system for screening each advertisement to determine if the information fulfils an acceptance criterion (see paragraph 103, 121, 122) but fails to teach and, if not, rejecting the advertisement. However, Gupta teaches a system that allows content providers to exclude or allow advertisements from his website (see Gupta column 15, lines 50-55). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Drummond ATM terminals operators would screen the received third party advertisements by categories/types in order to allow/deny said advertisements and screened unacceptable advertisements. It would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that public ATM terminals would screen and censor advertisements in order to avoid offending customers with advertisements that said customers would have found offensive.

As per claim 29, Drummond teaches:

A method of leasing advertising space on one or more automated teller machines (ATMs) in a network of ATMs which can dispense cash in the form of paper money, the method comprising the step of:

providing a database for storing authorized advertisements (see paragraph 116)

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allowing a third party to access the database and to transmit an advertisement thereto (see paragraph 116);

screening the transmitted advertisement (see paragraph 115);

Drummond does not expressly teach in the event of the screened advertisement meeting an acceptance criterion, storing the transmitted advertisement, and if the advertisement fails to meet the criterion, rejecting it; associating display criteria with the stored advertisement; transmitting the stored advertisement to any request from an ATM fulfilling the display criteria. However, Gupta teaches a system that allows content providers to exclude or allow advertisements from his website (see Gupta column 15, lines 50-55). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Drummond ATM terminals operators would screen the received third party advertisements by categories/types in order to allow/deny said advertisements and screened unacceptable advertisements. It would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that public ATM terminals would screen and censor advertisements in order to avoid offending customers with advertisements that said customers would have found offensive.

Drummond teaches applying a charge to an account associated with the third party (see paragraph 116), wherein all steps are undertaken by a single entity and its agents (see paragraphs 35 and 248).

(10) Response to Argument

The Appellant argues in page 13 of the Brief that the Drummond 888 reference is not a valid reference because more than five year has elapsed between the filing of the provisional 60/149,765 and the filing of Drummond 888 and therefore, according to the Appellant, the Drummond reference 888 cannot be entitled to the filing date of the provisional application 60/149,765 (08/19/1999). Also, the Appellant argues that it is possible that a chain of one or more applications may bridge the five-year gap but the PTO has not identified such a chain. Furthermore, the Appellant argues that if Drummond 888 becomes entitled to the filing date of the provisional in question, the PTO must show, according to the Appellant, that the content of Drummond 888, used to reject the claims (such as paragraph 116), is present in the provisional but that has not been done. The Examiner answers that the Drummond reference 888 (01/31/2005) is a division of application 09/638,848 (08/14/2000), which issued as a US patent (7,080,036) on July 18, 2006. The MPEP rule 35 U.S.C. 120 Benefit of earlier filing date in the United States explained that "An application for patent for an invention disclosed in the manner provided by the first paragraph of section 112 of this title in an application previously filed in the United States, or as provided by section 363 of this title, which is filed by an inventor or inventors named in the previously filed application shall have the same effect, as to such invention, as though filed on the date of the prior application, if filed before the patenting or abandonment of or termination of proceedings on the first application or on an application similarly entitled to the benefit of the filing date of the first application and if it contains or is amended to contain a specific reference to the

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earlier filed application". Therefore, because the Drummond 888 reference was filed (Jan 31, 2005) prior to the patenting of Application 09/638,848 (July 18, 2006; US 7,080,036), then, the Drummond reference 888 is entitled to the filing date of the application 09/638,848 (08/14/2000). Furthermore, because application 09/638,848 (08/14/200) was filed not later than 12 month after the date on which the provisional application 60/149,765 was filed (08/19/1999) and it contains a specific reference to the provisional application, then Application 09/638,848 is entitled to filing date of said provisional application 60/149,765 (see MPEP 119 (e)). Therefore, contrary to Appellant argument, the Drummond 888 reference is entitled to the filing date of the provisional application 60/149,765 (08/19/1999) and is a valid reference. The Examiner use the Drummond 888 as prior art instead of the Drummond patent (US 7,080,036) because at the time of issuing the Final Rejection (07/13/2006) said Drummond patent (US 7,080,036) was not available yet as a patent. Furthermore, regarding the Appellant argument that the PTO has not shown that the content of Drummond 888 reference is present in the provisional application in question, the Examiner answers that MPEP 37 C.F.R. 1.14 recites in the section Unpublished pending applications (including provisional applications) whose benefit is claimed. A copy of the file contents of an unpublished pending application may be provided to any person, upon written request and payment of the appropriate fee (§ 1.19(b)), if the benefit of the application is claimed under 35 U.S.C. 119(e), 120, 121, or 365 in an application that has issued as a U.S. patent, an application that has published as a statutory invention registration, a U.S. patent application publication, or an international patent application publication that

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was published in accordance with PCT Article 21(2). A copy of the application-as-filed, or a specific document in the file of the pending application may also be provided to any person upon written request, and payment of the appropriate fee (§ 1.19(b)). The Office will not provide access to the paper file of a pending application, except as provided in paragraph (c) or (h) of this section". Therefore, contrary to Appellant argument, the Appellant may have requested a copy of the provisional application 60/149,765 upon written request and payment of the appropriate fee in order to corroborate that the provisional application 60/149,765 had complete support for the Drummond 888 reference. The Examiner corroborates that the provisional application 60/149,765 has complete support for the Drummond 888 reference because all the paragraphs recited in the provisional application 60/149,765 are also recited in the Drummond 888 reference with the numbering of the paragraphs being the only difference between both references. For example, paragraph 116 in Drummond 888 reference corresponds to paragraph 110 in the provisional application 60/149,765 and where paragraphs 1-59; 60-95; 96-97; 98-170; 171-180; 181-190; 191-218; 219-266; 269-277; 278, 279-305; 306-311 of the provisional application 60/149,765 corresponds to paragraphs 1-59; 64-99; 101-102; 104-176; 178-187; 189-198; 200-227; 229-276; 278-286; 288; 292-318; 335-340 of the Drummond 888 reference.

The Appellant argues in page 14 of the Brief that in Drummond there is no "third party" present because according to the Appellant, the owner of the website supplies the advertising to the same website. The Examiner answers that Drummond teaches in paragraph 116 that "the operator of the machine is able to sell paid advertising to third

parties and then access the HTTP records such as HTML files corresponding to those third parties' products or services" and that "advertising documents may be accessed from advertising servers". Therefore, contrary to Appellant's argument, Drummond teaches the "third party" advertisers deliver advertisements to the users of the ATM terminals from said advertisers servers and therefore, Drummond teaches Appellant's "third party" limitation.

The Appellant argues in pages 15-16 of the Brief with respect to claim 27 that in Drummond the claimed two entities (the "customer" and the "one providing a database") are not present because according to the Appellant, in Appellant's claimed invention the "customer" is different from the party/agency which provides the database of advertisements. The Examiner answers that Drummond teaches that the "customer" accessing the ATM is different from the advertisers that provides the advertisements to the ATM terminals, where said advertisements are obtained from databases in advertisers' servers (see Drummond paragraph 116). Therefore, contrary to Appellant's argument, Drummond teaches Appellant's claim 27.

The Appellant argues in page 17 with respect to claim 27 that Drummond does not teach that a customer transmits the advertisement to the database. The Examiner answers that claim 27 recites "allowing an authorized ATM customer to access the database and to transmit advertisement from an ATM to the database for storing therein". Drummond teaches storing advertisement in an ATM terminal obtained from advertisers (*i.e.* authorized customers) servers for subsequent displaying to a customer of said ATM (see paragraph 116). Therefore, contrary to Appellant's argument,

Drummond teaches that advertisers have access to an ATM database to store their advertisements from said ATM terminal to said database.

The Appellant argues in page 17 that Drummond does not teach that "the advertisement is stored in a database entry associated with the ATM because the specification teaches that each ATM has a specific advertisements associated with it. The Examiner answers that the Appellant is arguing about limitation not stated in the claim. Claim 27 simply recites "storing the screened advertisements in a database entry associated with the ATM" but said limitation does not say anything about specific advertisements. Drummond teaches each ATM may have its own server operating therein (see paragraph 172) and that advertisers stored their advertisements in said servers (see paragraph 116). Furthermore, Drummond teaches selectively targeting advertisements depending of the ATM where said advertisements would be displayed (see paragraph 88). Therefore, contrary to Appellant's argument, Drummond teaches Appellant's claimed invention.

The Appellant argues in page 18 that the Drummond and the Gupta references are contradictory because according to the Appellant, Gupta's concept of censorship is contrary to Drummond's concept of wide range. The Examiner answers that Drummond teaches embodiments where the ATM may enhance security by limiting the addresses that the browser may access (see Drummond paragraph 151) and selecting the advertisements to be displayed in the ATM terminal (see Drummond paragraph 88). Gupta teaches a system that allows content providers to exclude or allow advertisements from his website (see Gupta col 15, lines 50-55). Therefore, contrary to

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Appellant's argument, Drummond concepts is not wide range and it would have been obvious to combine the two references in order to allow/deny unacceptable advertisements to be displayed in the ATM terminals.

The Appellant argues in page 20 of the Brief with respect to claim 16 that the two "means" in claim 16 have not been shown in a reference having an appropriate filing date because said two "means" have not be shown in the Drummond provisional application 60/149,765 and that the provisional application is not a valid prior art because a five-year gap between the filing of provisional and Drummond 888. The Examiner already answered said argument in paragraph 1 of this section Response to Arguments.

The Appellant argues in pages 21-22 with respect to claim 18 that Drummond does not teach "allocation times" and that Drummond does not show a "browser". The Examiner answers that Drummond teaches delivering advertisements to ATM customers at various times during transaction (see paragraphs 114-116) and that said delivering of content is displayed using an Internet Browser (see paragraph 116 "HTTP records"; paragraph 74). Therefore, contrary to Appellant's argument, Drummond teaches Appellant's claim 18.

The Appellant argues in pages 22-23 of the Brief with respect to claim 20 that the two "means" have not been shown in a valid reference because the provisional application 60/149,765 is not valid as prior art. The Examiner answers as explained in paragraph 1 of this section, that the Drummond 888 is a valid reference and the MPEP (37 CFR 1.14) said that the Appellant may order a copy of said provisional application.

The Appellant argues in page 23 of the Brief that Drummond does not teach “logging” the number of times an advertisement database was accessed and generating a bill accordingly. The Examiner answers that Drummond teaches that “access to advertising documents may be tracked and payment made to the customer’s institution, the operator of the system and/or owner of the machine, by the entity associated with the advertising materials presented to the customer” (see paragraph 121). Therefore, contrary to Appellant’s argument, Drummond teaches Appellant’s claimed limitation.

The Appellant argues in page 24 of the Brief with respect to claim 22 that Drummond does not teach the limitation “a server interconnected to the ATM and for accessing the advertisement database in response to a request from the ATM” The Examiner answers that Drummond teaches accessing advertisers server interconnected to the ATM in response to a request from the ATM (see paragraph 116). Therefore, contrary to Appellant’s argument, Drummond teaches Appellant’s “server” limitation.

The Appellant argues in page 25 of the Brief with respect to claim 26 that the two servers recited in said claim are not disclosed by the Drummond reference. The Examiner answers that Drummond teaches accessing a financial server to authorize the cash dispense transaction (see paragraphs 34-35) and advertisers servers to deliver the advertisements (see paragraph 116). Therefore, contrary to Appellant’s argument, Drummond teaches the two servers in claim 26.

The Appellant argues in page 25-26 that Drummond does not teach claim 27. The Examiner answers that Drummond teaches screening software to prevent the sending messages to particular address (see paragraph 142), limiting the address that

the ATM address may access (see paragraph 151) and selecting the advertisements that would be displayed in an ATM terminal (see paragraph 88). Therefore, contrary to Appellant's argument, Drummond teaches claim 27 limitations.

The Appellant argues in page 27 that Drummond does not teach claim 30. The Examiner answers that Drummond teaches in paragraph 88 means for screening, applying and transmitting the advertisement data to one or more ATM in accordance to display criteria (*i.e.* "deliver document selectively").

The Appellant argues in pages 27-30 that neither prior art references teaches rejecting advertisements submitted to a database and that no expectation of success of combining the reference has been shown. The Appellant further argues that one goal of Drummond is to download advertising without restriction and display it and Gupta says that advertising will not be displayed. The Examiner answers that Drummond teaches embodiments where the ATM may enhance security by limiting the addresses that the browser may access (see Drummond paragraph 151) and controlling the advertisements to be displayed in the ATM terminal (see Drummond paragraph 88). Gupta teaches a system that allows content providers to exclude or allow advertisements from his website (see Gupta col 15, lines 50-55). Therefore, contrary to Appellant's argument, Drummond goal is not downloading advertising without restriction and Gupta goal is not that advertisements would not be displayed. Therefore, it would have been obvious to combine the two references in order to allow/deny unacceptable advertisements to be displayed in the ATM terminals.

The Appellant argues in page 30 of the Brief that Drummond's advertising is a subset of the materially generally which he obtains from websites and if Drummond is modified so that Gupta's system is used to deliver all such material to the customer, then according to the Appellant, Drummond would be rendered inoperative. The Examiner answers that Gupta teaches that it is old and well known in the promotion art that content providers allow or deny advertisements to be displayed in their website and it would have been obvious that ATM content owners would also do the same as it is old and well known to do so, as taught by Gupta in order to control the messages displayed in their ATM terminals.

The Appellant argues in page 31 of the Brief that Gupta teaches "censorship" while Drummond does not. The Examiner answers that Gupta teaches a system that exclude or allow advertisements (see col 15, lines 50-55) and Drummond teaches limiting the address that a browser may access (see paragraph 151) and controlling the advertisements displayed in an ATM terminal (see paragraph 88). Therefore, contrary to Appellant's argument, Gupta not only teaches "censorship" as it teaches allowing the display of some advertisements and Drummond teaches controlling the advertisement to be displayed in an ATM terminal. Therefore, contrary to Appellant's argument, Gupta and Drummond are not contradictory.

The Appellant argues in pages 32-33 of the Brief that Drummond and Gupta do not teach that advertising that is not rejected is added to a "database", that rejected advertisement is not added to the "database" and that material is withdrawn from the database and used in specific way. The Examiner answers that Gupta teaches a

system that exclude or allow advertisements from being displayed in a content provider site (see col 15, lines 50-55) and Drummond teaches limiting the address that a browser may access (see paragraph 151) and controlling the advertisements displayed in an ATM terminal (see paragraph 88). Therefore, contrary to Appellant's argument, Gupta not only teaches "censorship" as it also teaches allowing the display of certain advertisements and Drummond teaches controlling the advertisement to be displayed in an ATM terminal. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Drummond ATM terminals operators would screen the received third party advertisements by categories/types in order to allow/deny said advertisements and screened unacceptable advertisements, as taught by Gupta. It would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that public ATM terminals would screen and censor advertisements and would not stored deny advertisements in their databases and stored accepted advertisements in order to display to customer advertisements that customer would not find offensive as the ATM is a public terminal.

The Appellant argues in pages 34-36 of the Brief that screening by public terminal has not been shown in the prior art and that the goal of the PTO, which is to prevent offense to customers has not been shown in either references. The Examiner answers that Gupta teaches avoiding displaying pornographic images to visitors of religious sites (see col 15, lines 50-55) and Drummond teaches controlling the advertisements to be displayed in ATM terminals (see paragraph 88). Therefore,

contrary to Appellant's argument, Gupta teaches the limitation of preventing offending customer that visit a particular site and Drummond and Gupta are combinable.

The Appellant argues in pages 37-38 of the Brief that the stated goal of preventing offense to customer of ATM has not been shown in the prior art and that the rational does not state who has this stated goal. Therefore, the Appellant argues that until the holder of the goal is identified, the rational cannot be used. The Examiner answers that the Examiner rejection of claim 27 in the Final rejection filed 07/13/2006 indicated that the holder of said goal is the ATM terminal operators. Therefore, contrary to Appellant's argument, the Examiner already indicated the holder of said goal.

The Appellant argues in page 39 of the Brief that while Gupta in the combined references may suggest suppression of certain advertising, no teaching is present which explains what criteria are used to accept advertising. The Examiner answers that Gupta teaches content providers rejecting pornographic advertisements but allowing book advertisements (see col 15, lines 50-55). Therefore, contrary to Appellant's argument, Gupta teaches criteria for accepting advertising.

The Appellant argues in page 41 of the Brief that Drummond does not teach that a browser is made available to the customer. The Examiner answers that Drummond teaches that the message that are displayed in the ATM terminals are "HTML" documents (see paragraphs 64-66) and that said messages are read using Internet browsers (see paragraph 74). Therefore, contrary to Appellant's argument, Drummond teaches a browser available to the customer of the ATM terminal.

The Appellant argues in page 41 that Drummond does not teach "applying a charge to each advertisement based on the number of accesses". The Examiner answers that Drummond teaches tracking access to advertisement documents and billing advertisers accordingly to said accesses (see paragraph 121). Therefore, contrary to Appellant's argument, Drummond teaches Appellant's claimed limitation.

The Appellant argues in pages 43-45 of the Brief that Drummond does not teach "storing the screened advertisement in a database entry associated with the ATM" because Drummond does not teach that advertising is stored so that the advertising for a specific ATM can be retrieved. Furthermore, the Appellant argues that the Appellant offers to amend the claim, if the Board directs to say "an entry associated with an ID code of the ATM". The Examiner answers that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). There is no mention in Claim 27 that the limitation "storing the screened advertisement in a database entry associated with the ATM" means that a specific advertisement is associated with a ATM terminal or a database entry associated with an ID code of the ATM. Therefore, the Appellant is arguing about limitation not stated in the claims.

The Appellant argues in pages 46-47 with respect to in claim 29 that a single entity and its agents performs all steps cited in claim 29 and that Drummond does not teach that a single or its agents performs said steps. Furthermore, the Appellant argues that the term "agents" means entities which are controlled by the "entity". The Examiner answers that nowhere in Appellant's specification is recited or disclosed that the term

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"agents" means entities which are controlled by the single entity. Therefore, the Appellant is arguing about limitation not disclosed in the Appellant's specification. Furthermore, Drummond teaches agents and entities performing steps of claim 29 (See paragraphs 35 and 248). Therefore, contrary to Appellant's argument, Drummond and Gupta teach Appellant's claim 29.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Daniel Lastra



Conferees:

Eric Stamber



Raquel Alvarez